

Commissioner’s “already-final administrative act” appointing a board of managers). Unless the Court considers whether or not the Commissioner has the statutory authority to issue the sanctions Defendant TEA has recommended in its final report, Defendants will argue these acts — even if *ultra vires* — are unreviewable. *See id.*

Defendants next assert there is no emergency because Houston ISD has known about the purported harms since before they filed this lawsuit in June. But Defendants own recent actions have created the emergency.

Defendant Morath created urgency by sending a letter that notifies Houston ISD he intends to either close a campus or appoint a board of managers based on the ratings of one Houston ISD high school.¹ Either action would be *ultra vires*. But once the Commissioner makes his decision, he will undoubtedly take the position that this Court has no jurisdiction to review his decision — even if his actions are unlawful. *See id.*

Defendant TEA has created an emergency by issuing a final report earlier this week. On October 30, 2019 (the day after Houston ISD filed its Application for Preliminary Injunction), TEA issued its final report, which was sent to state legislators and the media in addition to the school district. Now that the final report has issued, the Commissioner is poised to determine what sanctions he would like to enact against Houston ISD. Defendants claim there are “administrative steps” the Commissioner must comply with before taking action. But if that is true, why have Defendants refused to agree that the Commissioner will not take action until this Court decides the Application for Preliminary Injunction? Furthermore, Plaintiff’s claims arise from the Commissioner’s failure to

¹ This letter is attached to Houston ISD’s Application for Preliminary Injunction as Exhibit 6.

comply with required administrative steps before taking corrective action against the District.

Defendants complain that Houston ISD has not sought leave to amend its complaint to include the claims contained in the preliminary injunction. But all of the claims in Houston ISD's Application for Preliminary Injunction are contained in its amended complaint except for the single claim regarding the Commissioner's September letter. And that claim is not an affirmative basis for relief, it is Houston ISD's defensive response to an assertion made by Defendants. The September letter is not a surprise to Defendants — they sent it. Defendants' complain that Houston ISD has not filed an amended complaint to include the September letter but Houston ISD sent a copy of the amended complaint to Defendants' counsel earlier this week. Defendants' counsel has indicated that Defendants are unopposed to a motion for leave to amend the complaint, which will be filed by the end of the day.

CONCLUSION AND PRAYER

Defendants have had months to review the factual and legal allegations asserted in Houston ISD's Application for Preliminary Injunction. (Indeed, their responsive pleading deadline is next week, on November 8, 2019.) Houston ISD appreciates that Defendants are not generally opposed to a hearing on Houston ISD's Application for a Preliminary Injunction and would prefer to set the hearing at some future mutually-agreeable time. But Defendants will not agree to refrain from taking any further actions against Houston ISD until this Court rules on the Application for Preliminary Injunction. Absent such an agreement from Defendants, the hearing cannot be delayed simply because it would be more convenient for Defendants.

Accordingly, Houston ISD respectfully requests the Court set their Application for Preliminary Injunction for hearing at the first available date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 1, 2019, the foregoing document was filed via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/ David Campbell
David Campbell